

Northwest Territories Lands and Resources Devolution Agreement: A Plain Language Summary

This is a summary of the *Northwest Territories Lands and Resources Devolution Agreement* (called **the Agreement** in this summary).

The Agreement was negotiated by the Government of Canada (Canada), the Government of the Northwest Territories (GNWT), and the following Aboriginal governments: Gwich'in Tribal Council, Inuvialuit Regional Corporation, Northwest Territory Métis Nation, Sahtu Secretariat Incorporated and Tłı̨chǫ Government.

The Agreement has not yet been formally approved by the leadership of the participating governments, and may be subject to change before it is signed.

This is a summary only. It has been prepared to generally communicate the content of the Agreement. For any other purposes the original text of the Agreement should be used.

Introduction

This section sets out the purpose and guiding principles of the *Northwest Territories Lands and Resources Devolution Agreement*.

Description

- Devolution will result in the GNWT being responsible for the administration and management of Northwest Territories:
 - public land
 - resources
 - rights in respect of waters

Note: The Agreement refers to ‘rights in respect of waters’ because waters are not owned by anyone.

- Existing rights of current land or lease owners will continue to be respected, and the management of resources will not be interrupted.

Chapter 1 – Definitions and Interpretation

Chapter 1 defines certain words and terms used throughout the Agreement.

Description

- Examples of key definitions include:

Aboriginal Party - an Aboriginal Organization that is a party to the Agreement

Encumbering Right - means a right to use the land that government gave to someone before that land became Settlement Lands

Party - an organization that will sign the Agreement. Parties include Canada, the GNWT, and participating Aboriginal Organizations

Public Lands - lands, including islands and the high Arctic, currently owned and managed by Canada, for which responsibility will be transferred to the GNWT under devolution, including water, minerals, oil and gas, that are a part of those lands. This does not include Settlement Lands

Onshore – generally, lands that lie on the land side of the low water line of the sea coast including within small enclosed bays

Oil - crude petroleum that is not natural gas

Gas - natural gas including methane

Minerals - metals or other non-living, natural substances that were or are part of the land before production

Resource Revenues - money collected by the government from mineral and oil and gas production, and uses of water, on public land in the NWT

Settlement Lands – lands owned by Aboriginal governments as the result of a land claim or other settlement agreement

Transfer Date - the date when responsibility for public land, resources, and water rights in the NWT is transferred from Canada to the GNWT

Waters - any inland waters on or below the surface of the land onshore in the Northwest Territories

- Should there be any disagreements about what any part of the Agreement means, Canada, the GNWT and the Aboriginal Parties agree to try different ways of resolving the disagreement before going to court.

Chapter 2 – General Provisions

Chapter 2 outlines legal requirements and protections that apply to the whole Agreement.

Description

- The Agreement becomes effective when it is signed by the Parties. After it is signed, it may be more than a year before the Transfer Date.
- Certain Aboriginal Organizations may sign on to the Agreement later and become a Party to the Agreement.
- Examples of key General Provisions are that:
 - Nothing in the Agreement shall be understood to affect the Constitution of Canada.
 - The Agreement does not give the Legislative Assembly powers greater than a province.
 - The Agreement will not negatively affect the negotiation or settlement of Aboriginal rights claims agreements, or existing land claim agreements.
 - Where conflicts arise between land claim or self-government agreements and the Agreement, the land claim or self-government agreement will be followed to the extent of the conflict.

Chapter 3 –Transfer of Responsibilities

Chapter 3 describes what responsibilities will be taken on from Canada by the GNWT, and how the GNWT will take on these responsibilities.

Description

- Responsibility for the administration and management of public land and rights in respect of water in the NWT will move from Canada to the GNWT.
- The Legislative Assembly of the Northwest Territories will be able to make laws with respect to public land and rights in respect of water.
- The GNWT will have responsibility similar to a province for administering public land and rights in respect of water.
- Existing rights with respect to public land and in respect of water will not be negatively affected by devolution.
- Aboriginal rights cannot be taken away or reduced by devolution.
- Canada will change or replace certain laws to allow devolution to happen.
- The GNWT promises to make sure the transition from Canada to the GNWT is smooth by, at first, making new laws similar to the current federal laws.
- Canada has the ability to take back land from the GNWT for national purposes, including the settlement of Aboriginal land claims.
- Canada will keep its responsibilities for land needed for federal government purposes, including waste sites that are not transferred to the GNWT, so that these sites can be cleaned up.
- For the *Mackenzie Valley Resource Management Act (MVRMA)*:
 - o Canada will delegate to the GNWT the ability to:
 - approve the issuance of certain water licences
 - hold money as security to make sure that land and water users follow the rules
 - choose land and water inspectors
 - keep track of the effects of land and water use over time
 - o Canada will keep the ability to:
 - make changes to the *MVRMA*

- pay for each board under the *MVRMA*
 - choose who gets to be on the boards
 - administer environmental assessment and the Environmental Impact Review Board
- o The operation of the *MVRMA* will be subject to a review in five years to decide whether the GNWT should take on more powers, including the power to make changes to the *MVRMA*.
- Canada, the GNWT, and the Inuvialuit Regional Corporation will have a separate agreement about cooperating in the regulation of oil and gas development that overlaps their jurisdictions near the Beaufort Sea. This separate agreement is attached at the end of the Agreement in a schedule.
- Canada's one-third ownership interest in the subsurface rights for the Norman Wells Proven Area will not be transferred to the GNWT, but royalties will now be paid to the GNWT by Imperial Oil for its two-thirds interest in Norman Wells.
- Within sixty days after devolution, Canada and the GNWT, with the Inuvialuit Regional Corporation, will start negotiations for the management of oil and gas development in the offshore area of the NWT.

Chapter 4 – Post Devolution Resource Management

Chapter 4 refers to the *Northwest Territories Intergovernmental Agreement on Lands and Resources Management* negotiated between the GNWT and the Aboriginal Parties to address their relationship with respect to land management after devolution.

Description

- Aboriginal governments own a significant amount of land in the Northwest Territories.
- Aboriginal governments have, or will soon have, authority over settlement lands and resources.
- After devolution, the GNWT and Aboriginal government will work cooperatively on land management across their respective jurisdictions as part of a respectful government-to-government relationship.
- A council of GNWT and Aboriginal leaders, established under the *Northwest Territories Intergovernmental Agreement on Lands and Resources Management*, will ensure that public lands and settlement lands are managed in a way that:
 - o respects Aboriginal rights
 - o helps to find better ways manage lands
 - o creates opportunities
 - o avoids competition among Northern governments

Chapter 5 – Administration of Oil and Gas Resources among Onshore and Offshore Jurisdictions

Chapter 5 refers to the *Agreement for Coordination and Cooperation in the Management and Administration of Petroleum Resources in the Inuvialuit Settlement Region* between Canada, the GNWT, and the Inuvialuit Regional Corporation that addresses:

- information sharing for the management of oil and gas rights
- managing how oil and gas companies work
- the amounts they have to pay the resource owners, where oil and gas resources overlap the onshore and offshore

Description

- To help governments work together in the overlap areas of the onshore and offshore, Canada, the GNWT, and the Inuvialuit Regional Corporation will consult each other on:
 - o how they give permission to oil and gas companies to work
 - o the rules they make the companies follow
 - o the amount they charge the companies to produce oil and gas

Chapter 6 – Waste Sites

Chapter 6 describes how waste sites in the NWT will be managed after devolution.

Waste Sites are sites where *human activity has created a danger to human health or safety and no person or company is still legally responsible so the government needs to take over the clean-up. These may include sites such as abandoned mines and old oil and gas sites.*

Description

- Canada will remain responsible for Waste Sites on Public Lands created before devolution, and the GNWT will be responsible for Waste Sites created on Public Lands after devolution.
- After devolution, Canada will be responsible for:
 - Waste Sites created on Public Lands before devolution and before the lands became Settlement Lands
 - Waste Sites created on Settlement Lands before devolution that come from an Encumbering Right
- After devolution, the GNWT will be responsible for:
 - Waste Sites created on Public Lands after devolution and before the lands became Settlement Lands
 - Waste Sites created on Commissioner's Lands before the lands became Settlement Lands
 - Waste Sites created on Settlement Lands after devolution that come from an Encumbering Right
- After devolution, the Aboriginal government that owns the Settlement Lands will be responsible for:
 - Waste Sites created on Settlement Lands after the lands became Settlement Lands, except where they come from Encumbering Rights

Canada's inventory of waste sites will have five types of sites:

- Released Sites
- Remediated (cleaned-up) Sites
- Excepted Waste Sites
- Sites Requiring Remediation (clean-up)

- o Operating Sites

- Each type of site has specific conditions with respect to management responsibility.
- Canada will consult with the Parties when it decides what type each site is.
- What happens to a site depends on the type of site, as follows:
 - o Released Sites will become public lands when transferred to the GNWT.
 - o Remediated (cleaned-up) Sites will be transferred if the GNWT agrees.
 - o Excepted Waste Sites will be dealt with outside of the Devolution Agreement (including Giant Mine).
 - o Sites Requiring Remediation will be kept by the Government of Canada until the clean-up is done.
 - o Operating Sites, such as an active mine, will become the GNWT's responsibility on the Transfer Date. The GNWT has up to five years to determine the financial and environmental stability of Operating Sites before it releases Canada from further liability.
- The Agreement addresses:
 - o clean-up standards
 - o Canada's assurances that Remediated Sites have been cleaned up
 - o the GNWT and Aboriginal Parties' right to assert that Canada is required to clean-up of certain Operating Sites or oil and gas sites
- If the GNWT or an Aboriginal party disagrees with Canada's decision that clean-up is not required at certain sites they can refer the matter to dispute resolution.
- A Waste Sites Management Committee including the Parties to the Agreement will watch over how the chapter is working and provide advice and recommendations to Canada on Waste Sites that it must clean up. The Terms of Reference (rules) for this committee are included in the Agreement.

Note: The Giant Mine waste site is covered by a separate agreement between the Government of Canada and the GNWT.

Chapter 7 – Human Resources

Chapter 7 addresses how Canada and the GNWT will work together to manage employees with jobs that will be affected by devolution. Matters such as job offers, pay and benefits for employees that choose to accept GNWT job offers are addressed.

Description

- The GNWT will make a reasonably comparable job offer to every permanent federal employee working in the NWT whose job is affected by the Agreement, matching as closely as possible the employee's responsibilities, job location and pay.
- Where federal compensation is higher than territorial compensation, employees who accept a job offer will be provided a transition allowance to bridge the difference for up to 5 years
- Affected federal employees that accept job offers with the GNWT will be able to carry over unused vacation and sick leave, and the GNWT will provide for continued health care, dental, disability, life insurance, and other benefits in accordance with the GNWT Terms of Employment.
- To help ensure a smooth changeover, Canada and the GNWT want as many affected federal employees as possible to accept jobs with the territorial government as a part of devolution.

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Chapter 8 – NAO Properties Assets, Contracts and Records

Chapter 8 describes the transfer of federal property (like computers), records, buildings, office leases, information technology and other assets that the GNWT will need to deliver the transferring programs. This also includes keeping or changing existing agreements and contracts that Canada now has with other parties.

Description

- Schedule 9 provides the List of Properties to be transferred.
- Canada will continue its regular scheduled building maintenance until the Transfer Date.
- The Chapter describes how existing leases and moveable assets will be transferred.
- Canada and the GNWT will work together on the transfer of computer assets, and will form an Information Technology working group to help with the transfer of digital records, computers and computer programs.
- Records the GNWT needs to deliver transferring programs will be transferred and added to the GNWT's existing record and information systems.
- The Chapter describes rules about access to records that are not transferred and the treatment of confidential documents.

Chapter 9 – Financial Matters

Chapter 9 sets out the main terms of the financial transfers related to devolution.

Description

- Canada has promised to provide the GNWT with \$26.5 million to do one-time changeover work related to the transfer. Canada provided \$4 million of this payment to the GNWT after the Agreement-in-Principle (AiP) was signed, and it will pay the remaining \$22.5 million after the Agreement is finalized.
- Canada will provide the GNWT with an annual amount of \$67.3 million, to pay for the delivery of transferred programs and responsibilities. This funding will be added to the GNWT's annual transfer payment from Canada, which takes inflation into account.
- Canada will provide the Aboriginal Parties with a total of up to \$4 million to support one-time change-over work related to the transfer. In addition to this amount, Canada has already provided Aboriginal Parties with \$853,226 to do change-over work between the signing of the AiP and the signing of the Agreement.
- If the Agreement is not implemented, Canada will be entitled to recover any money that has not been spent from the GNWT or any Aboriginal Party.
- On the Transfer Date and every year after, Canada will provide the Aboriginal Parties with a total amount of up to \$3 million to support the work arising out of the Agreement, including on-going involvement in the council of leaders set up by the *Northwest Territories Intergovernmental Agreement on Lands and Resources Management*.
- On the Transfer Date and every year after, Canada will provide each Aboriginal Party that has signed the Agreement with \$200,000 to support their participation in the Waste Sites Management Committee.
- On the Transfer Date and every year after, Canada will provide the Inuvialuit Regional Corporation with \$200,000 to participate in the management of oil and gas resources in the onshore/offshore overlapping area in the Beaufort Sea region as set out in the *Agreement for Coordination and Cooperation in the Management and Administration of Petroleum Resources in the Inuvialuit Settlement Region*.

Chapter 10 – Net Fiscal Benefit

Chapter 10 explains how the Net Fiscal Benefit is calculated, and refers to an agreement with Aboriginal Parties that will set out how it will be shared. This is separate from the financial matters described in Chapter 9.

*The **Net Fiscal Benefit** is the amount of resource revenue that the GNWT can keep each year – and that will not be deducted from its annual Territorial Formula Financing payment from the federal government.*

Description

- The GNWT will be entitled to keep up to 50% of resource revenues annually. This is similar to the treatment of provincial resource revenues under the federal equalization program.
- The amount of the Net Fiscal Benefit will depend on the amount of resource revenue generated from public lands in the NWT each year.
- The maximum Net Fiscal Benefit is equal to 5% of the GNWT's Gross Expenditure Base in that year. The amount the GNWT can keep each year will grow as the Gross Expenditure Base grows.
- The Net Fiscal Benefit will be reviewed every 5 years to ensure it:
 - remains consistent with the principles of Territorial Formula Financing
 - closely matches the resource benefits received by provinces under the equalization program
 - continues to provide incentive for the NWT to develop its natural resources
- NWT Aboriginal governments that sign the final Agreement and the *Northwest Territories Intergovernmental Resource Revenue Sharing Agreement* will receive a share of the GNWT's resource revenues from public lands, up to a combined total of 25% of the GNWT's Net Fiscal Benefit, in addition to any amounts they already receive under land claim agreements.
- The resource revenues that Aboriginal governments receive under the *Northwest Territories Intergovernmental Resource Revenue Sharing Agreement* will not be deducted from any other funding provided by Canada or the GNWT like other Own Source Revenues.

Chapter 11 – Implementation Matters

Chapter 11 refers to the Devolution Implementation Plan, included as Schedule 15.

Description

- A non-binding implementation plan is attached to the Agreement.

Note: This plan is designed to help the Parties to work together to help make the transfer of NWT land and resource management responsibilities to the GNWT faster and less expensive.